



POLICE DEPARTMENT

October 18, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Kevin McGeough
Tax Registry No. 937065
Police Service Area No. 8
Disciplinary Case Nos. 83204/07 & 85421/09

The above-named member of the Department appeared before me on March 5, 2010, June 4, 2010, and June 11, 2010, charged with the following:

Disciplinary Case No. 83204/07

1. Said Police Officer, Kevin McGeough, while assigned to the Housing Borough Bronx Queens Impact Response Team, while on duty, on or about April 22, 2007, at a location known to this Department, in Queens County, did wrongfully engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, in that said officer failed to follow a direction to be the arresting Officer of an individual or individuals, identities known to the Department.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT – GENERAL REGULATIONS

2. Said Police Officer, Kevin McGeough, while assigned to the Housing Borough Bronx Queens Impact Response Team, while on-duty, on or about April 22, 2007, at a location known to this Department, in Queens County, was discourteous to a New York City Police Sergeant, identity known to the Department, to wit; after being assigned as the arresting Officer of an individual in custody, said Officer stated loudly to said Sergeant in sum and substance "I'm not going to take this shit...I'm not going to get jammed up over this."

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL
GENERAL REGULATIONS

COURTESY • PROFESSIONALISM • RESPECT

Disciplinary Case No 85421/09

1 Said Police Officer Kevin McGeough, while on-duty and assigned to PSA 8, on or about January 23, 2008, was absent from his assignment without permission or police necessity for a total of one (1) tour of duty

P G 203-05, Page 1, Paragraph 2 – PERFORMANCE ON DUTY - GENERAL
GENERAL REGULATIONS

The Department was represented by Pamela Naples, Esq , Department Advocate's Office, and the Respondent was represented by John P Tynan, Esq

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges in Disciplinary Case No 83204/07, and a plea of Guilty to the subject charge in Disciplinary Case No 85421/09 A stenographic transcript of the trial and mitigation record has been prepared and is available for the Police Commissioner's review

DECISION

Disciplinary Case No 83204/07

The Respondent is found Guilty of Specification No 1 and Not Guilty of Specification No 2

Disciplinary Case No 85421/09

The Respondent in pleading Guilty is found Guilty as charged

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Michael Dunn, Police Officer Nicole Echevarria, and Captain Gregory Hoag as witnesses.

Sergeant Michael Dunn

Dunn has been a member of the Department for approximately 13 years and is currently assigned to Internal Affairs Bureau (IAB). He has been at IAB for two-and-a-half years investigating corruption and misconduct. Prior to being assigned to IAB, Dunn had been with the Bronx/Queens Housing Borough Impact Response Team (IRT) for over one year as an IRT supervisor. As such, Dunn assigned people to posts and made sure they were taking enforcement in the areas they were assigned.

Dunn stated he was working a 1750 by 0245 tour on April 21, 2007 as an IRT supervisor. On that day, his team was assigned to the 114 Precinct housing developments, in particular the Ravenswood Houses. Dunn testified he was doing his routine patrol and was in the Ravenswood base, which is the satellite of Police Service Area (PSA) 9. Captain Hoag, Commanding Officer of the Bronx-Queens Housing IRT, called Dunn into the VIPER room to show him surveillance camera footage of people drinking beer on the corner, right around the block on one of the Ravenswood buildings. After observing this, Dunn contacted two of his officers and told them to go over and take enforcement. While watching the camera footage, Dunn saw one of the perpetrators pick up his hands and push one of the officers. Dunn ran out of the base and went to the corner where the confrontation was taking place. When he arrived at the scene, there was a struggle with five perpetrators, who were all eventually subdued and arrested, two of the original responding officers were injured. The perpetrators were placed into different vans and sent to the 114 Precinct to be processed for arrest. Dunn testified he took one of the injured officers to Ravenswood Houses, where a sergeant said he would take care of the member of the service (MOS) and ensure he got to the hospital while Dunn went to

the precinct Dunn testified that ten minutes elapsed from the time he returned to Ravenswood until he arrived at the 114 Precinct

When Dunn arrived at the precinct, Hoag told him to assign the arrests to Officers Harkins, Boening, and the Respondent because they had not had any arrests in a couple of months Dunn tried calling the three officers via phone, but was not able to make contact with them After a couple of minutes, Dunn went outside whereupon he saw the three officers and told all three that "they were going to have to take the collars " Officer Boening then started cursing and saying he was not going to take the collar The other two officers did not respond and went inside Dunn told Boening to go back out to the post Later on Boening, came back and tried to apologize upon which Dunn again instructed Boening to go back out to the post

Dunn went back into the precinct and started to inventory the money from the perpetrators, which was a couple thousand dollars in drug money Dunn said he was also ensuring that the prisoners were lodged in the cells and trying to make sure that the MOS's that went to the hospital were all right Dunn testified that he assumed that the other two officers, Harkins and the Respondent were doing the collar However, five or six minutes later, Officer Echevarria approached him and stated that the Respondent was not taking the arrest Dunn went to the muster room and approached the Respondent and said to him, "Echevarria said you are not taking the arrest " Dunn stated that he had addressed the Respondent by name and his voice was "not really" raised, "not like it was outside previously " The Respondent replied, "I'm not taking this shit, I am not taking this arrest I'm not getting jammed up " Dunn stated that Boening had made a similar statement earlier outside Dunn testified that the Respondent seemed nervous and that his

tone of voice was “elevated, but not that elevated ” Dunn did not notice anything about the Respondent’s body language

Dunn testified that he found the Respondent’s response more disobedient than discourteous Dunn believed that when the Respondent said he did not want to get “jammed up,” the Respondent was thinking he was going to have to sign paperwork for something he did not see Dunn, however, said he explained to the Respondent twice that he was “taking the collar ” This meant that the Respondent would be the arresting officer and Dunn was going to be an “informed by ” The Respondent again said that he was not going to take the arrest Dunn testified he told the Respondent he was going to get a Command Discipline (CD) and went back to his desk to count the money Officer Calderon took the arrest

Ten minutes later, the Respondent approached Dunn and said he would take the arrest Dunn said that it was too late, but he asked Calderon to come in with the arrest paperwork Dunn stated he wanted to see if Calderon had already been named on the paperwork Dunn said it “would behoove [them] both to have [the Respondent’s] name on the paper” because he needed the activity Calderon, however, was already named and the arrest paperwork had been started Dunn then sent the Respondent back to post

During cross-examination, Dunn acknowledged that he had been an IRT supervisor for over a year by April 22, 2007 Dunn explained that an IRT is a mobile response team that performs enforcement where there are spikes in crime Dunn stated that the IRT is comprised exclusively of “rookie” officers Housing IRT members, however, have been previously assigned to another command Dunn acknowledged that officers assigned to IRT usually do not have more than five years – rather, they have

close to two years or less on the job

Dunn further acknowledged that five individuals were arrested while he was on the scene that day. Dunn said he believed that the Respondent was not on the scene, but he could not be sure because there were approximately 40 officers present from various commands. He said that all of those 40 officers did not come back to the 114 Precinct. Dunn acknowledged that he had gone to the precinct because that was where the IRT processes arrests when assigned to the area. Dunn stated that the actual housing development in that precinct area is Ravenswood, which is in the confines of the 114 Precinct. Dunn said that he had 32 officers under his supervision that day, but only seven were back at the command when he was processing the arrests. Dunn stated he did not know why Harkins, Boening, and the Respondent eventually showed up. He acknowledged that he needed them back at the command so that they could take the arrests. Dunn agreed that it was common practice to assign an arrest to someone who was not at the scene. He acknowledged that a person not at the scene would have no first-hand knowledge of what happened. Dunn disputed the fact that assigning an arrest to someone who was not a direct participant or observer of the crime would create more paperwork for the District Attorney or the Department. Dunn explained that it would only be one affidavit that he would fill out and sign. Dunn said that the criminal court complaint would be signed by the arresting officer, but would have to be signed regardless. He disputed the fact that the officer would then have to go over every part of the incident with him because they need to have knowledge of what happened before they can sign their name to a legal document. Dunn explained that the complaint could state that it was informed by Dunn and the affidavit would be offered in support. The

Assistant District Attorney (ADA) could also contact him and ask him to draw up the affidavit and sign it directly. Dunn said he has signed complaints in the past where other officers took the arrest because sergeants do not take arrests. Dunn agreed there was no prohibition in the Patrol Guide that prevents a sergeant from taking an arrest. He added that on that day he could not supervise 32 cops as a patrol supervisor and process the arrests at the same time. Dunn acknowledged that on the day of the incident, he could have taken the arrests irrespective of the fact that he was a patrol supervisor. He also acknowledged that he did not take the arrests, but assigned it others. Dunn stated that at no time did he say to write that the Respondent witnessed events that happened -- everything on the complaint would be referred to as, having been informed by Dunn.

Dunn acknowledged that he had a "heated argument" with Boening and that Boening cursed and used foul and profane language. He agreed that Boening was the most problematic. Dunn stated that when he approached the Respondent he did not tell the Respondent the specifics of what led to the arrest of the five individuals. Moreover, Dunn did not explain what he had personally observed that led to the apprehension and detention of the individuals. He said he did not tell the Respondent that a large sum of money had been recovered nor where it had been recovered from. Dunn denied that not telling the Respondent any of this was "putting the cart before the horse." Dunn stated that he told the three that they were going to have to take the arrests because five people were arrested, the other officers had been injured, and he was handling the money, which was "paramount" for that case. Dunn initially stated that the money was the most important aspect of this case because it was an arrest for a drug transaction and the money was the evidence. He said that the drugs were not important to the case because

none were recovered Afterwards, Dunn admitted that taking care of the injured officers was the most important part of the incident because the efforts of two sergeants had been allocated towards that endeavor Dunn explained that not only was the sergeant from PSA 9 ensuring the injured officers get transferred to the hospital, but Dunn was also in charge of the line-of-duty paperwork for those officers Dunn said that line-of-duty reports have nothing to do with processing arrests Dunn agreed it was fair to say that counting the money was still an important aspect of the ADA's drug case Dunn said he had not asked Harkins, Boening, and the Respondent to count the money because in an arrest situation, whoever is the recovering officer would have to testify that they recovered and counted the money

Dunn said that the other 29 officers he was supervising that day were not injured He acknowledged that he did not assign the other 29 officers the arrests because Captain Hoag ordered that the arrest specifically go to Boening, Harkins, and the Respondent Dunn admitted that this was because the three had not made an arrest in three months and needed the activity credited to them for their arrest activity Dunn explained that the activity they would be credited for was processing the arrest fingerprinting the arrestees through the paperwork and taking them down to the court

Dunn acknowledged that an official Department interview about the incident was conducted on April 24, 2007 at 1540 hours He said that the interview occurred 12 hours after the incident, but that he was exhausted from spending the whole night processing the arrests He admitted that he answered the questions to the best of his ability During the interview, Dunn stated that he told Boening, "I told you to go back to your fucking post " Dunn acknowledged that he had said "fucking post " He also acknowledged that

when he had said this to Boening it was in a conversational tone. Dunn said he had ordered Harkins, Boening, and the Respondent to take the arrest, however, he admitted that he had not used the words, "I am ordering you to take the arrest." Dunn also acknowledged that he did not tell the three officers anything about the case when he assigned the arrests to them. He explained that he did not have time to and when he was cursed at by the officers he felt upset because they were not doing their job. Dunn acknowledged that the Respondent did say he would take the arrest a few minutes later. He stated that he had told the Respondent that it was too late because someone else had already taken the arrest.

Dunn acknowledged that Boening and the Respondent had said almost the identical things in the same order, but at different times and in different parts of the precinct. Those words were "I'm not taking this shit, I don't want to get jammed up." Dunn acknowledged that Boening said it outside and the Respondent said it in the muster room. Dunn acknowledged that he had been asked about this during his official Department interview. Dunn said that when the Respondent had said those words, he was not yelling – but, his voice was "a little elevated" and seemed more upset, "like he didn't know what was going on." Dunn admitted that nothing had been explained to the Respondent about the arrest at that time.

Police Officer Nicole Echevarria

Echevarria has been a member of the Department for five years and is currently assigned to the School Safety Task Force where she patrols schools. In April 2007, Echevarria was assigned to Bronx Queens IRT. Echevarria said she was working on

April 22, 2008¹ She said that during her tour, there came a time when she had to respond to the 114 Precinct because officers needed assistance and they had five arrests at the station house. Echevarria said her presence was requested at the precinct. Once she arrived, she helped another officer with pedigree information and started the processing of the arrest paperwork. She was not assigned a specific arrest. Echevarria explained that once she arrived, she just started helping out. She stated that the precinct was very chaotic – there were five people arrested and they were trying to get all the identifying information. Echevarria said she spoke with Dunn at the 114 Precinct because there were family members of the arrestees that wanted information and who were also willing to pick up belongings. She asked Dunn who would be the arresting officer. Dunn said that the Respondent was the arresting officer. Echevarria found the Respondent in another room speaking to another officer. She asked the Respondent if he was the arresting officer of one of the arrestees and he responded that he did not know. Echevarria said the Respondent had no paperwork in front of him when she entered the room. Furthermore, Echevarria stated the Respondent neither asked for clarification nor spoke with Dunn after speaking with her.

Afterwards, Echevarria spoke with Dunn and told him that she did not think the Respondent was taking the arrest and that he did not really know what was going on. She thought the Respondent seemed confused and did not know if he was going to be the arresting officer. Echevarria testified that Dunn then got up to speak with the Respondent. She was not present during that conversation.

During cross-examination, Echevarria said the Respondent never said that he absolutely was not going to take the arrest. She could not recall if there was anyone else

¹ The incident occurred on April 22, 2007

in the room preparing paperwork Echevarria was not at the scene of the incident when the arrests occurred, but she was there after the arrestees had been removed Echevarria said she did not know what had happened prior to asking the Respondent for information about the arrest

Captain Gregory Hoag

Hoag is a 19-year member of the Department and is currently the commander of the Department of Environmental Protection's Hazardous Material ("HAZMAT") team He has been at that position for one-and-a-half years Hoag testified that in April 2007, he was the commanding officer of the Bronx Queens Housing Impact Team (IRT) On April 22, 2007, Hoag was operating the VIPER cameras inside the Ravenswood Housing Development, whereupon he saw a group of people drinking alcohol Hoag radioed for units to respond and address the condition A scuffle then broke out and a call for assistance was made Hoag responded to the scene where several groups of people were being combative to some of his officers as well as officers from the 114 Precinct and other surrounding commands Once the arrests were made, Hoag "started to put the police officers back, clear the scene, and get things back to normal " Hoag stated that he saw the Respondent on the scene while he was there, but did not have an opportunity to speak with him He did not think the Respondent got out of the van

Hoag testified that he had responded to the 114 Precinct after Dunn called him twice The first call was to inform him that they had five arrests and two arresting officers were injured and needed to go to the hospital He also was asking for direction on reassigning the arrests to somebody else Hoag told Dunn to reassign the arrests to

Boening and the Respondent because they had low activity and difficulty making their own arrests. Hoag testified that he was trying to help them out, figuring it would be a good way for the two to "get on the sheet." The second call by Dunn was to inform Hoag that Boening and the Respondent were refusing to take the arrest and asked what he should do. Hoag told him he would respond to the 114 Precinct. When he got to the 114 Precinct, Dunn informed Hoag that two other officers had already volunteered to take the arrests. Dunn still wanted guidance on what to do with Boening and the Respondent. Hoag instructed Dunn to have them go back to post. Hoag testified that he may have had a brief conversation with the Respondent telling him to return to post because that was his duty and assignment for the day.

Upon questioning by the Court, Hoag said he signed the charges because he thought they were warranted based on the investigation that took place and the Respondent's official Department interview.

During cross-examination, Hoag said he could not have issued a CD because the actions fell under a schedule B, which would be reviewed by the Department Advocate's Office or borough adjutant as well as a higher command. Hoag acknowledged that he had sought out the Advocate's office before signing off on the charges. Hoag further acknowledged that the Advocate's office opted for charges. Hoag admitted that he signed off on the charges only after he got guidance to go ahead with the charges from the Advocate's office. Hoag acknowledged that he signed the charges as a function of the chain of command because the charges come from his command, which then have to be approved based on the type of charge by the Advocate. Hoag agreed that his signing the charges was basically as a function of his position of commanding officer of the

Bronx Queens Housing IRT

During re-direct examination, Hoag stated that prior to conferring with the Advocate's office, he and Inspector McNamara made the decision to opt for charges. The Department Advocate's office then reviews the case based on their investigation.

The Respondent's Case

The Respondent called Police Officer John Harkins as a witness. The Respondent testified in his own behalf.

Police Officer John Harkins

Harkins stated that he has been with the Department since January 10, 2005. Harkins was first assigned to PSA 2 for six months. After completing that assignment, Harkins was assigned in March 2006 to Bronx Housing IRT, which covered PSA 7, 8, and 9. Harkins said he was familiar with the Respondent because they worked together at PSA 2 and Bronx Housing IRT. He declared that he was currently friends with the Respondent. Harkins said he had worked with the Respondent on various occasions, but he was not his steady partner. Harkins explained that the IRT did not have steady partners, but were assigned partners nightly. Harkins testified that there were 50 to 60 police officers at Bronx Housing IRT. He turned out of PSA 7, which was in the Bronx. Harkins said that the IRT was not given a steady sector, but that it changed on a daily basis. Dunn was Harkins' supervisor at Bronx Housing IRT.

Harkins said that on April 22, 2007, he was assigned to a sector in PSA 9, which was in the 114 Precinct. He was working with the Respondent at the Woodside Houses.

on that day Harkins said there came a time when a radio transmission came over stating that an officer needs assistance at the Ravenswood houses and therefore, they got into the transport vehicle to respond. There were four to six officers inside the transport vehicle. Harkins stated their vehicle was the last vehicle to respond, multiple units had responded before them. There was a large crowd and other officers were already returning to their posts. Captain Hoag, who was their commanding officer, guided Harkins and those in his vehicle to maintain crowd control. Harkins testified that three individuals had been arrested and taken into custody prior to their arrival. Dunn then instructed them to go to the 114 Precinct because that was where PSA 9 processes their arrests. Harkins said this direction came ten minutes after Hoag's, which Dunn said Hoag had approved.

Harkins said that he arrived at the precinct five to ten minutes later. Upon arrival, Dunn approached him, Boening, and the Respondent and told them they were taking the arrests. Harkins said nothing, but Boening expressed his concern that he was being assigned an arrest where he had not observed what had happened. Harkins said they had not seen the people who had been arrested yet. Harkins said the Respondent also asked questions along the same line of concern. The Respondent used a normal tone of voice and did not use any foul or profane language. Dunn responded, "You are taking these fucking collars." Harkins said he went into the command and the Respondent followed, he did not know what happened to Boening. Harkins then went into the cell area where they search the prisoners for contraband. Upon leaving the cell area, Harkins saw the Respondent speaking with Hoag and Dunn to the side of the front desk. Harkins said either Dunn or Hoag (he could not recall who) told the Respondent to leave the command and go "98." Harkins testified that he did not hear the Respondent raise his voice while

talking to Dunn, or that there was any commotion or arguing. The cell area is approximately five to eight feet from the front desk.

Harkins stated he had been inside the 114 Precinct numerous times prior to April 22, 2007 and was familiar with the layout of the cell area and the front desk. He testified that if someone is yelling at the front desk, it could be heard from the cell area. Harkins did not hear the Respondent yell or use profane language in a manner that could be heard from another room. Harkins stayed at the precinct for the rest of the day, but Dunn did not make any mention of what had transpired between himself and Boeing or the Respondent. Dunn also did not ask him about any questions concerning their conduct after the Respondent left the precinct. Harkins, Calderon and Officer Ramceran ended up being the arresting officers for that incident.

During cross-examination, Harkins acknowledged that when Dunn came outside of the 114 Precinct, he was addressing him, Boeing, and the Respondent. Harkins said Dunn had previously threatened them with a transfer if they did not make an arrest in the next few days. Harkins acknowledged that he knew what Dunn meant when he said, "taking the collar." Harkins acknowledged that he then went inside and started processing the arrest, but did not know who he would be processing. Harkins said he went inside and spoke to other officers to try and find out what was going on. Harkins acknowledged he was in the muster room, but did not recall when. He could not recall when Dunn was present in the muster room, either.

The Respondent

The Respondent is a 5 and a half year member of the Department. After graduating from the Police Academy, the Respondent was assigned to PSA 2 in Brooklyn's East New York for six months and from there he was assigned to the Bronx Housing IRT, which covers PSA 7 and 9.

The Respondent testified that his responsibilities at IRT were patrolling high crime areas in the housing developments. He stated that he had made seven arrests from the time he arrived at the IRT until April 22, 2007. The Respondent said there was a quota of arrests he needed to make each month. The Respondent said that at the IRT, steady partners were not given – rather partners were assigned after roll call on a daily basis.

On April 22, 2007, he had been assigned to work with Police Officer John Harkins to cover PSA 9 in Queens at the Woodside Houses. That evening, they received a radio transmission concerning other officers. He stated, "I was the driver and we heard our guys screaming over the air so we said we better get over there and try to help out." Other officers assigned to the Woodside Houses also drove with them. When they arrived at the scene, they observed a crowd dispersing and there were several police officers and patrol cars at the scene. He did not see anyone arrested at the scene.

At one point, Captain Hoag approached them and told them to disperse any remaining crowds. The Respondent said they did that for approximately five to fifteen minutes. He said that Hoag further told them that once the crowds were dispersed they should go "98" or back to their patrol duties. Once the crowds were dispersed, they went back to the Woodside Houses.

The Respondent stated that on the way to the Woodside Houses, Police Officers Boeing, Echevarria and Calderon who were assigned to the Woodside Houses pulled up next to the Respondent in a van and told them that Sergeant Dunn wanted them at the 114 Precinct. They did not know why they were being told to go to the 114 Precinct.

The officers arrived five or ten minutes later at the 114 Precinct. There were no supervisors out front at the time. Harkins and the Respondent got out of the van as did the others in the second van. The Respondent testified that Dunn then "came storming out of the 114 precinct and came running up to Officer Harkins, myself and Officer Boeing stating that he wanted us and we had no choice but to take these fucking collars." The Respondent did not respond to Dunn because he said he was shocked and did not know what to say. Boeing on the other hand, began asking Dunn questions about what took place, the number of people arrested, names, why the arrests occurred. Dunn responded by saying that Boeing's questions did not matter, they just have to take the arrests. According to the Respondent, Dunn started cursing at them whereupon Boeing told him, "Go fuck yourself." The Respondent said Boeing did not scream at Dunn, but he said it in a voice that could be heard. Dunn replied by telling Boeing to go "fucking 98"--back to his post whereupon Boeing got back into his van. The Respondent said he told Dunn that he did not have a problem taking the arrest, but was going to write down that he was the assigned officer – not the arresting officer because that would mean that he observed the arrest take place.

The Respondent then returned to the 114 precinct. Inside the 114 precinct, the Respondent spoke with Calderon and Ramceran who said they wanted the arrest because they were on the scene. The Respondent went to Dunn, who was at the desk with a

pedigree sheet that is filled out for arrests told him "that I spoke to the other officers and if he could give me the information and if he wanted me to take the arrest that I would take it as an assigned arrest and maybe the other guys would tell me what happened At which time, he said it's too late don't worry about it " He said that Dunn told "it's too late don't worry about it " Dunn explained to him that Calderon and Ramceran were taking the arrests and to let them take it The Respondent told Dunn that he would ask Ramceran one more time if he could take it and he went to ask him Ramceran told him that he would not give the Respondent the arrest because it was his arrest The Respondent then informed Dunn that Ramceran did not want to give away his arrest and walked away from the desk

Captain Hoag then came into the building and the Respondent spoke to him to find out more about what was going on Hoag then spoke to Dunn and the Respondent about what happened Hoag told the Respondent "don't worry about it, it's just a complete misunderstanding" and that Boeing was going to get a CD for being discourteous to a supervisor The Respondent stated that Hoag then told him to return to post and then go back to PSA 7 for end of tour The Respondent thought that this meant any confusion had been "fixed" and there was "a better understanding that I was going to go away and about my business and go back to PSA 7 for end of tour The Respondent declared that he did not use foul language that entire night The next day at work, the Respondent was being told by everybody, "Oh, you are going to get GO-15 " The Respondent thought they were "joking " He stated that what he thought was a joke turned out to be real Shortly thereafter, the Respondent was transferred out of IRT to PSA 8 and Boeing was transferred to PSA 1

During cross-examination, the Respondent acknowledged that he was the subject of an official Department interview a day or two after the April 2007 incident. When he was reminded that during that interview he told investigators in sum and substance that Dunn was behind the desk vouchering a large sum of money and at this point he told the Respondent that he was taking the arrests and at that point the Respondent walked away, the Respondent testified that "There was a point that I went behind the desk he was vouchering money I asked him if I was taking the arrest would they be assigned and which defendants I would be taking and what name I would put down on the pedigree sheet and he did tell me there was a time because I went back to him several times to reassure that you know, there wasn't a problem between me and him or a misunderstanding to try to fix it to see what was really going to take place." He further stated that "At that time from what I remember after he told me he was too busy with vouchering the money that he had to voucher all this money yeah. I did go back to the cell area where Harkins was to see actually what was going on to see what these guys even looked like." He did not recall Dunn asking him to come back to his desk. He stated, "I don't remember if he asked me or I just went back to the desk."

He then reviewed his statements from his official Department interview and recalled that Dunn had told him that he was taking one of the arrests "but he didn't give me any further information." He did not recall if at that point he asked Dunn about the arrests he was told to take. When asked by the Court if he said during his interview that he walked away from Dunn, the Respondent replied "Yeah, I said I walked away."

The Respondent also acknowledged that he was in the muster area on two occasions. When he went in the muster room the first time, Dunn was behind the desk

either vouchering the money or putting people in the log book. The Respondent acknowledged that while he was in the muster room, Echevarria entered the room. Echevarria said that one of the arrestee's family members had arrived and that rather than voucher the property, the Respondent would give it to the family member and have them sign off on it. The Respondent said he did not know what Echevarria was talking about and he did not know what property they had, but Echevarria kept insisting. The Respondent said he acquiesced and Echevarria took his memo book. Echevarria took the property and gave it to the family member and then had them sign his book. The Respondent explained that this was the procedure they do if the property is not vouchered at the station. The Respondent acknowledged that he told Echevarria that he did not know what property he was supposed to be taking, what paperwork, or who the arrestee was.

The Respondent admitted that after his encounter with Echevarria, he did not go to Dunn to find out if he was assigned an arrest. When Dunn entered the muster room shortly after his conversation with Echevarria, the Respondent did not know if Dunn was under the impression that he was not taking the arrest when he entered. The Respondent stated that Dunn approached him and said that Echevarria had told him that he was not taking the arrest. The Respondent told Dunn that he had never said that – rather, he told Dunn that he told her that he did not know if he was taking the arrest or who he was supposed “to be arresting.” He also said that he told Dunn that he “didn’t have any information I don’t know what went on.” The Respondent admitted he did not ask Dunn which arrest was assigned to him. He stated that the communication between him and Dunn was quick because Dunn was “so wound up and hyper, everything happened so

fast that might ” He added that “I remember the communication was fast the communication between both of us, was so fast, it wasn’t like we sat there for 10, 15 minutes and had a chitchat you know, after I said that he just went back to his business and at that time I think he left the muster room and went back right behind the desk and that was it ” The Respondent did not ask Dunn for any information regarding the arrest he was told to process

The Respondent acknowledged that shortly after speaking with Dunn in the muster room, the Respondent spoke to Dunn at his desk again The Respondent acknowledged he brought the pedigree paperwork with him to start filling it out for his assigned arrest The Respondent stated Dunn said it was too late

Mitigation for Disciplinary Case No 85421/09

The Respondent testified that on January 2008, he was designated Chronic B sick On January 23, 2008, the Respondent was not at work He was not told the next day that he was supposed to have been at work that day

The Respondent explained that he was out sick because he had been admitted into the hospital He had a chronic cough for a year and that one day he had [REDACTED] [REDACTED] The Respondent went to [REDACTED] Hospital in [REDACTED], [REDACTED] [REDACTED] After an examination, he was told that his cough was caused by an [REDACTED] problem The Respondent was told by the doctors that the [REDACTED] [REDACTED], which was causing the [REDACTED] The Respondent was admitted into the hospital for one week He said he thought he came back on the day that the district surgeon had told him to go back The Respondent stated he came in one day later

than he was supposed to. He said that this was because of his misunderstanding of what was told to him at the Medical Division. During the time he was out, the Respondent said he was at home resting as his own doctor and the district surgeon instructed him to do.

During cross-examination, the Respondent admitted that he had met with the District Surgeon after being released from the hospital. The Respondent stated that the District Surgeon talked with him about his medical condition and gave him a slip that showed when he had to return to work. The District Surgeon did not review the slip with him and he admitted that he also did not review the slip nor did he call his command to tell them when he would be returning to work. He stated that he did not remember what date he had been told to return and all he knew was that he returned a day later than he was supposed to, but no one at work had said anything about it to him. The Respondent said that the first he ever heard that he had missed a day of work was during his official Department interview two years later. The Respondent acknowledged that at the interview, it was explained to him that there was an entry made in the Command Log about when the Respondent was supposed to return. The Respondent said he did not recall the entry.

FINDINGS AND ANALYSIS

• . .

The Respondent is charged with being absent from his assignment without permission or police necessity for a total of one tour of duty.

The Respondent pled guilty to the aforementioned charged and as such is found Guilty as charged.

Disciplinary Case No 83204/07

The two specifications in this case are related In Specification No 1, the Respondent is charged with failing to follow a direction from Sergeant Dunn to be the arresting officer of an individual or individuals

In Specification No 2, the Respondent is charged with being discourteous to Dunn in that after Dunn assigned him a case as the arresting officer the Respondent told Dunn in a loud voice in sum and substance "I'm not going to take this shit I'm not going to get jammed up over this "

This Court concludes from the evidence presented at this trial that the Respondent refused to take an arrest after being directed to do so by Dunn

Five individuals were placed under arrest after being involved in a melee with police officers During that melee, two of the officers were injured and needed treatment Captain Hoag directed Dunn to have Officers Boening, Harkins and the Respondent take the arrests Dunn, prior to entering the stationhouse, told the three that they were going to take the arrests because five people were arrested, officers had been injured and Dunn was handling and counting money that was important to the case After the three were directed by Dunn to process arrests, Boening immediately told him "I'm not going to take this shit I'm not going to get jammed up over this " Dunn stated that he had a "heated argument" with Boening and that Boening cursed and used foul and profane language He was then told by Dunn to return to post

Neither Harkins nor the Respondent refused Dunn's directive and Dunn believed at that point that they went inside the stationhouse to process the arrests While the Respondent stated that he did not say anything to Dunn, Harkins did testify that the

Respondent raised questions about taking an arrest that he did not observe, but that he did so in a normal tone of voice and did not use foul language. It was only when Officer Echevarria approached Dunn and told him that the Respondent was not taking the arrest was when Dunn was made aware that the Respondent was reluctant to obey his directive.

Dunn then went into the muster room and confronted the Respondent about not taking the arrest where Dunn states that the Respondent told him in a "not really" raised voice "I'm not taking this shit, I am not taking this arrest. I'm not getting jammed up." He explained that the Respondent's voice was "elevated, but not that elevated." Dunn found the Respondent's response to be more disobedient than discourteous. Officer Calderon then took the arrest.

The Respondent in contrast testified that he was always willing to take the arrest but was concerned about not having enough information about the arrest to process the paperwork. He also claimed that he wanted it made clear in the paperwork that he was not the arresting officer but the assigned officer. This Court finds, however, that if he was willing to take the arrest, he would have been involved in processing the paperwork instead of being in the muster room where he gave Echevarria the impression that he did not know anything about taking an arrest. In addition, there was no evidence presented to this Court that the Respondent ever had the paperwork for one of the arrests, yet he claimed to have kept going back to Dunn with an interest in taking the arrest—one time to volunteer to take one of the arrests that Calderon and Ramceran had volunteered for.

While this Court is convinced that the Respondent refused to take the arrest it is not convinced that he used the language as depicted in Specification No. 2. That specification, although it states "in sum and substance" attributed the very specific words,

"I'm not going to take this shit I'm not going to get jammed up over this " The specification makes it clear that his words were spoken in a loud voice The uncontested evidence shows that Boening also used those exact words when he refused to take the arrest Dunn attributed those words to the Respondent but claimed they were spoken in a "not really" raised voice or in a "little elevated" voice In addition, Harkins who testified credibly as to what he knew stated that the Respondent did not use profanity and did not raise his voice

Dunn also believed that the Respondent's response was more disobedient than discourteous leaving this Court to conclude that the Respondent said something about not getting jammed up in refusing to take the arrest, but did not necessarily use the exact profanity laced words depicted in the specification Those words were clearly discourteous in nature

Based on the foregoing, this Court finds the Respondent Guilty of Specification No 1 and Not Guilty of Specification No 2

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined See Matter of Pell v Board of Education, 34 N Y 2d 222, 240 (1974) The Respondent was appointed to the Department on January 10, 2005 Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum

The Respondent has pled Guilty to being absent from his assignment without

permission or police necessity for a total of one tour of duty. He also has been found Guilty of not obeying the direction of a superior officer by refusing to process an arrest as directed.

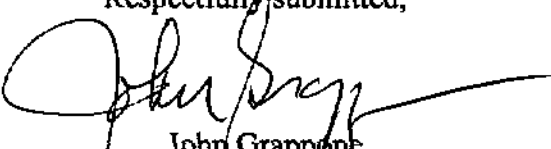
The Respondent testified in mitigation of his guilty plea basically stating that he made a mistake by missing a tour of duty. This Court finds that he was put on notice as to when he was expected to return to duty because it appeared on the medical slip that the District Surgeon gave him. The Respondent admitted to not looking at the slip which resulted in him not reporting for duty. It was his responsibility to know when he had to report for work and if he had any doubts he could have called his command or called the District Surgeon or looked at the slip that he had in his possession. He did none of these and therefore he has no excuse for not returning to duty as he was required.

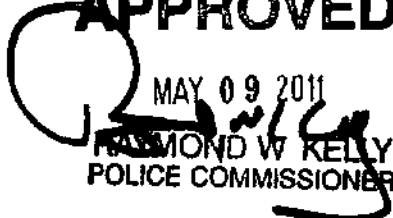
The Respondent being found Guilty of refusing to take the arrest is a more serious matter than missing a tour of duty. He was told to take or process the arrest during a time when his cooperation was needed. Five arrests were made, two police officers were injured and Dunn, his sergeant, was busy trying to keep things organized in light of the chaos that was taking place at the stationhouse. In addition to the arrests that had to be processed, family members were at the precinct inquiring about those arrested and Dunn had to make an accurate count of the money confiscated in the arrest. In all of this the Respondent was only worried about himself. He forgot or disregarded the fact that an important part of being a uniformed member of the Department is to process arrests and even more importantly to obey orders and assist fellow officers. He did none of this on that day. Moreover, based on the evidence he was also lacking in arrests even before refusing to take the one in this case. This Court therefore finds that a continued period of

monitoring is required for the Department to determine whether the Respondent is to remain as a member of the Department

Accordingly, this Court recommends that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and he may be terminated at anytime without further proceedings Further, this Court recommends that the Respondent forfeit a penalty of 30 vacation days

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner – Trials

APPROVED
MAY 09 2011

RAYMOND W. KELLY
POLICE COMMISSIONER

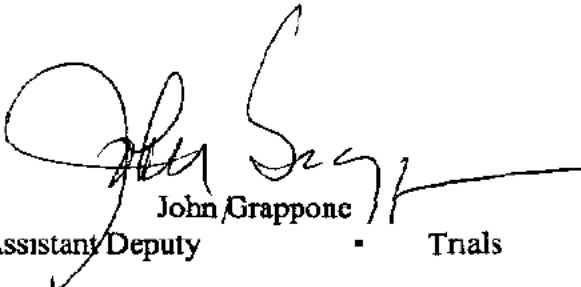
POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER KEVIN MCGEOUGH
TAX REGISTRY NO 937065
DISCIPLINARY CASE NOS 83204/07 & 85421/09

On the last three performance evaluations contained in his personnel file, the Respondent received a rating of 2.5 "Competent," 4.0 "Highly Competent" and 3.0 "Competent." [REDACTED]
[REDACTED]

The Respondent has no prior formal disciplinary record. On September 4, 2008, the Respondent was placed on LEVEL II PERFORMANCE MONITORING, based on his overall record.

For your consideration


John Grappone
Assistant Deputy Trials